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101ST CONGRESS
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HOUSE OF REPRESENTATIVES
REPORT
101-219

OFFICE OF ENVIRONMENTAL QUALITY REAUTHORIZATION

AUGUST 4, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 1113]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 1113) to authorize appropriations for the Office of Environmental Quality for fiscal years 1989, 1990, 1991, 1992, and 1993; to ensure consideration of the impact of major Federal actions on the global environment, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. CLARIFICATION OF NATIONAL ENVIRONMENTAL POLICY.

(a) STATEMENT OF GENERAL ENVIRONMENTAL POLICY.—Section 101(b) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(b)) is amended—

(1) in paragraph (5) by striking "and" following the semicolon;

(2) in paragraph (6) by striking the period and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(7) provide world leadership in ensuring a healthy and stable global environment.".

(b) ENVIRONMENTAL IMPACT STATEMENTS.—Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is amended—

(1) by striking clause (iii) and inserting in lieu thereof the following:

"(iii) reasonable alternatives to the proposed action that achieve the same or similar public purposes, including alternatives that avoid the adverse impacts described in clause (ii) and alternatives that otherwise mitigate those adverse impacts,"; and

(2) by inserting "and the public" immediately before the second period.

(c) FEDERAL AGENCY ACTION REGARDING GLOBAL ENVIRONMENT.—Section 102(2)(F) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(F)) is amended to read as follows:

H563-13

"(F) work vigorously to develop and implement policies, plans, and actions designed to support national and international efforts to enhance the quality of the global environment;".

(d) IMPLEMENTATION OF MITIGATION MEASURES.—Title I of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 106. Environmental mitigation and monitoring measures and other conditions discussed in a detailed statement or other document prepared under section 102(2)(C) and selected by an agency as part of its final decision to undertake an action shall be implemented by the appropriate agency."

SEC. 2. PRESIDENT'S STRATEGY FOR ENVIRONMENTAL PROGRESS.

Section 201 of the National Environmental Policy Act of 1969 (42 U.S.C. 4341) is amended to read as follows:

"SEC. 201. Not later than January 31 of each year, the President shall transmit to Congress a report which—

"(1) describes the President's strategy for implementing the policy and objectives set forth in section 101 during that year;

"(2) describes areas of new or heightened environmental concern;

"(3) proposes initiatives to strengthen and improve Federal environmental programs;

"(4) sets priorities for national action to protect the environment; and

"(5) analyzes issues associated with the implementation of this Act and the effectiveness of measures specified in detailed statements of Federal agencies under section 102(2)(C) to mitigate the adverse environmental impacts of Federal actions.".

SEC. 3. REGULATORY AUTHORITY.

Section 204 of the National Environmental Policy Act of 1969 (42 U.S.C. 4344) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(9) to promulgate regulations governing the implementation of this Act by all Federal agencies (including independent regulatory commissions) which include provisions for public review and comment on the detailed statements required by section 102(2)(C) and, as appropriate, on other documents prepared pursuant to this Act.".

SEC. 4. REVIEW FUNCTIONS OF COUNCIL.

(a) ISSUANCE OF GUIDELINES FOR AGENCY REVIEW OF CERTAIN ENVIRONMENTAL IMPACT STATEMENTS.—Not later than 6 months after the date of the enactment of this Act, the Council on Environmental Quality (hereinafter in this Act referred to as the "Council") shall issue guidelines under which each Federal agency shall review a statistically significant sample of detailed statements prepared by the agency under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) in which measures were specified for the mitigation of any adverse impact on the environment that was predicted to occur as a result of agency action.

(b) CONTENT OF GUIDELINES.—Guidelines issued by the Council under subsection (a)—

(1) shall establish the timing and frequency of reviews to be conducted by agencies under the guidelines; and

(2) shall require that Federal agencies examine—

(A) the accuracy of predictions of adverse impact which were included in such statements, including predictions of impacts on fish and wildlife populations and habitats;

(B) the extent to which mitigation measures specified in statements under section 102(2)(C) of the National Environmental Policy Act of 1969 were implemented; and

(C) the effectiveness of those implemented mitigation measures.

(c) AGENCY REVIEWS.—Each Federal agency shall carry out reviews in accordance with guidelines issued by the Council under this section, and shall promptly submit to the Council the results of those reviews.

(d) SUMMARY OF RESULTS IN ANNUAL REPORT.—The President shall include a summary of the results of the reviews carried out by Federal agencies under this section with the annual report transmitted to the Congress under section 201 of the National Environmental Policy Act of 1969 (42 U.S.C. 4341).

SEC. 5. IMPACT OF AGENCY ACTIONS ON THE ENVIRONMENT OUTSIDE UNITED STATES JURISDICTION.

(a) ISSUANCE OF REGULATIONS BY COUNCIL.—Not later than 1 year after the date of the enactment of this Act, the Council shall issue regulations under which each Federal agency shall—

(1) ensure the consideration, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), of the significant effects of its major actions on the environment of the global commons outside the jurisdiction of any nation; and

(2) ensure the formal assessment, in a manner that furthers the objectives of the National Environmental Policy Act of 1969, of the significant effects of its major actions, including extraterritorial actions, on the environment outside the jurisdiction of the United States and its territories and possessions.

(b) CONTENTS OF REGULATIONS.—The regulations issued by the Council under subsection (a) shall—

(1) be consistent with the national security and foreign policy of the United States; and

(2) include guidance for Federal agencies for assessing the effects (including cumulative effects) of proposed major actions, on—

(A) global climate change;

(B) depletion of the ozone layer;

(C) the loss of biological diversity;

(D) transboundary pollution; and

(E) other matters of international environmental concern.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

Section 205 of the Environmental Quality Improvement Act of 1970 (42 U.S.C. 4374) is amended by adding at the end the following:

"(e) $1,000,000 for each of the fiscal years 1989 and 1990.

SEC. 7. SPECIAL PROVISION.

Any decision to authorize full operation of the Pilgrim nuclear power plant in Plymouth, Massachusetts shall be deemed to be a Federal action subject to review under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), and no such full operation may occur until the environmental review documents required by that section have been completed.

Amend the title so as to read:

To authorize appropriations for the Office of Environmental Quality for fiscal years 1989 and 1990; to ensure consideration of the impact of major Federal actions on the global environment, and for other purposes.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 1113 is to authorize appropriations for the Office of Environmental Quality for fiscal years 1989 and 1990, to ensure the consideration of the impact of major Federal actions on the global environment, and to make certain clarifying amendments to the National Environmental Policy Act of 1969.

BACKGROUIND AND NEED FOR LEGISLATION

OEQ AND CEQ

The Office of Environmental Quality (OEQ) was established in 1970 to provide staff support for the Council on Environmental Quality (CEQ), a three member, Presidentially-appointed advisory board which was created by the National Environmental Policy Act of 1969 (NEPA).

The statutory responsibilities of CEQ are:

(1) to review and evalate the programs and activities of the Federal Government to determine how they are contributing to the attainment of national environmental goals;

(2) to assist Federal agencies and departments in appraising the effectiveness of their existing and proposed policies and activities affecting environmental quality;

(3) to develop and recommend to the President policies to improve environmental quality;

(4) to advise and assist the President in achieving international cooperation on environmental issues;

(5) to help coordinate environmentally significant actions and policies within the Federal Government, and to help resolve conflicts between Federal agencies concerning those issues;

(6) to foster research relating to environmental quality; and

(7) to report annually to the President and the Congress regarding both short term and long term environmental issues facing the nation.

In addition, CEQ is responsible, pursuant to Executive Order, for overseeing the implementation of NEPA by Federal agencies. CEQ provides guidance to Federal agencies on NEPA requirements, comments on proposed NEPA regulations and mediates disputes between agencies regarding NEPA compliance.

FUNDING

The Environmental Quality Improvement Act of 1970 provides a standing authorization of $1,000,000 annually to support the CEQ. A separate authorization for the OEQ expired at the end of the 1985 fiscal year. Congress has nevertheless continued to appropriate funds for OEQ operations.

The combined appropriation for OEQ/CEQ in fiscal year 1989 is $850,000. The President's request for fiscal year 1990 is $861,000. These figures are less than one-third the average amount appropriated during the 1970's. The current number of permanent positions at OEQ/CEQ is 12, compared to a high of 57 in 1972.

NEPA

NEPA sets forth the environmental policy of the United States and requires Federal agencies undertaking major actions that significantly affect the quality of the human environment to perpare environmental impact statements (EISs) that analyze the potential effects of those activities and evaluate alternatives to them.

H.R. 1113, as amended, contains a number of provisions that are designed either to clarify NEPA or to improve its effectiveness. These include:

(1) a clarification that NEPA applies to all Federal agencies and independent regulatory commissions;

(2) language making explicit the authority of CEQ to issue regulations governing compliance with NEPA;

(3) the addition of language, based on existing CEQ regulations, that requires Federal agencies to implement environmental monitoring and mitigation measures evaluated during the NEPA environmental review process and selected as part of a decision to undertake an action;

(4) a requirement that agencies consult with the public prior to the preparation of an EIS;

(5) an amendment to require that CEQ's annual report include a statement of the President's strategy for achieving national environmental goals; and

(6) a requirement that Federal agencies review the effectiveness of environmental mitigation measures taken pursuant to EISs they have prepared.

NEPA AND THE INTERNATIONAL ENVIRONMENT

The primary environmental review requirements of NEPA (contained in section 102(2)(C)) apply to all "* * * major Federal actions significantly affecting the quality of the human environment."

Despite, or perhaps because of, the broad sweep of this language, there has been a controversy from the time NEPA was enacted about whether the statute was intended to apply to Federal actions that take place outside, or have significant environmental impacts outside, the jurisdiction of the United States. The statute does not otherwise specify the extent of its reach; nor has the issue been clearly resolved by the courts.

In 1979, President Carter issued Executive Order 12114 requiring Federal agencies to take international environmental considerations into account for certain categories of actions. The Executive Order was not based on NEPA and did not, therefore, resolve the legal question as to NEPA's reach. Rather, it sought to address concerns about the international environmental effects of Federal actions while avoiding a showdown over the interpretation of NEPA.

Executive Order 12114 required each Federal agency taking actions "having significant effects on the environment outside the geographical borders of the United States" to establish procedures for taking those effects into account. The procedures required could include environmental impact statements of less formal environmental assessments or studies, and could, if appropriate, be carried out jointly with other nations.

The Executive Order included a long list of exclusions and exemptions related to considerations of national security, national interest, foreign policy, and trade. The Order does not, for example, apply to actions affecting the environment of a nation participating with the United States in that action, thereby excluding joint public works and economic development projects from its scope.

In recent years, increased attention has been paid by the public and by the Federal Government to the wide variety of threats posed to the global environment. Numerous scientific studies have warned about the potentially catastrophic effects of global climate change and depletion of the ozone layer. Conservationists are concerned about the loss of biological diversity and the extinction of plant and animal species. The governments of less developed nations have expressed concern about the export of hazardous wastes to their shores. Environmentalists have called for new procedures to assess the environmental effects of economic development projects funded by the World Bank and other multilateral development institutions.

In response to these concerns, the United States has taken a number of steps to demonstrate its commitment to solving interna-

tional environmental problems, including support for a global agreement to reduce dramatically the emission of chemicals that deplete the ozone layer. H.R. 1113 is intended to support these efforts by ensuring that Federal agencies do not unwittingly contribute to the very problems we are trying to solve.

The need for change was illustrated by a survey recently conducted by CEQ ("Survey on Executive Order No. 12114", October 21, 1987, CEQ). That survey indicated that the EIS process is rarely used to analyze the effects of Federal actions on ozone depletion and global warming. Since NEPA was enacted, only three EISs have addressed these issues, and none since 1978.

On September 9, 1988, CEQ conducted a public meeting on "Global Climate Impacts and the NEPA Process." At that meeting, Mr. Dick Sanderson, Director of the Office of Federal Activities of the Environmental Protection Agency (EPA) said that:

"Federal agencies currently make long range decisions concerning agriculture, forestry, water resources, coastal zone resources, energy resources and other natural resources with little or no regard for long range climate impacts. Federal projects, funds and licenses for infrastructure development lasting 50 years or more are planned, assessed in EISs, and implemented under the assumption that present climate conditions will prevail."

CEQ subsequently prepared a draft guidance for Federal agencies based on the conclusion that "agencies should begin now to examine how their actions may contribute to, and could be affected by, global climatic change." That draft policy guidance which is consistent with the purposes of this bill, is currently being circulated for comment within the Executive Branch.

In addition to actions that have a potential effect on global warming or the depletion of the ozone layer, many Federal agencies take actions that affect the international environment in a more limited way. These actions include the licensing for export of hazardous materials and pesticides; participating in, or financing of, public works, economic development and other construction projects overseas; scientific research activities in the oceans or in polar regions; and other international activities.

As amended by the Committee, section 5 of H.R. 1113 requires CEQ to issue regulations to ensure the consideration of the significant effects of major Federal actions on the environment outside the jurisdiction of the United States.

Committee Action

H.R. 1113 was introduced on February 23, 1989, by Mr. Studds, Mr. Davis, Mr. Young of Alaska, and Mr. Weldon and was referred to the Committee on Merchant Marine and Fisheries. On March 6, the bill was referred to the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

On March 7, the Subcommittee conducted a hearing on H.R. 1113. Testifying were Mr. A. Alan Hill, Chairman of CEQ; Mrs. Jennifer Joy Wilson, Assistant Administrator for External Affairs, EPA; and Mr. David Wirth, staff attorney for the Natural Resources Defense Council.

During his testimony, Mr. Hill endorsed section 2 of the bill, which revises the requirements for the annual report prepared by CEQ, and the provision in section 3 that makes clear the applicability of NEPA to all Federal agencies and independent regulatory commissions. He suggested that section 4 be modified to require a one time report, rather than continuous reporting, on the effectiveness of mitigation measures implemented as a result of EISs prepared by Federal agencies.

Mr. Hill did not comment on the clarifying amendments to NEPA made in section 1 of the bill and stated that no additional legislative authority is needed to enable CEQ to issue regulations requiring Federal agencies to take into account the effect of their actions on the global environment.

Mrs. Wilson of EPA testified in favor of the provision in section 1 that makes explicit the regulatory authority of CEQ, but did not comment on the other clarifying amendments to NEPA. She said, with respect to section 4, that "a review of NEPA mitigation by Federal agencies is long overdue", but favored a one-time, rather than a continuous, reporting requirement. She took no position on the provisions dealing with the international environmental effects of Federal agency actions.

Mr. Wirth testified that existing procedures for assessing the effects of Federal actions on the environment outside U.S. jurisdiction are not adequate.

Following the hearing, a draft substitute to the bill was prepared by the Subcommittee staff. Comments were solicited on that draft from numerous Federal departments and agencies. Many of the comments received pertained to a provision in the draft substitute that would have amended section 302(2)(C) of NEPA to refer explicitly to "extra-territorial Federal actions." That provision was not included in the substitute ultimately considered by the Subcommittee, nor is it contained in the bill, as reported.

The Subcommittee met on June 13, 1989 and ordered H.R. 1113 reported favorably to the full Committee on Merchant Marine and Fisheries with an amendment in the nature of a substitute.

The substitute, offered by Chairman Studds, made three substantive changes to the bill along with a number of minor clarifying and technical changes.

First, in section 1(a) and 1(c), the substitute would amend NEPA to add policy language emphasizing the need for the United States to take the lead in protecting the global environment.

Second, in section 5, the substitute would require CEQ to issue regulations under which each Federal agency shall ensure the consideration of the effects of its actions on the environment outside U.S. jurisdiction.

Third, in section 6, the substitute increased the proposed authorization for CEQ for fiscal years 1991 through 1993 from $1.0 million to $1.5 million annually.

Mr. Studds also offered an amendment, approved by voice vote, to make it clear that, when a Federal agency includes environmental mitigation and monitoring measures as a basis for its decision to go forward with an action, it has an obligation to implement those measures.

On June 21, the Committee on Merchant Marine and Fisheries met to consider H.R. 1113, as amended by the Subcommittee, and ordered the bill reported to the House of Representatives with three additional amendments.

The three amendments were offered en bloc by Mr. Studds and were approved by voice vote. The first amended section 6 to eliminate the authorization for funding for fiscal years 1991, 1992, and 1993. The second was a minor clarifying amendment to section 1(d). The third added a new section 7 pertaining to the application of NEPA to the possible resumption of full operations at the Pilgrim nuclear power plant in Plymouth, Massachusetts.

During Committee discussion, Mr. Tauzin expressed concern about the consideration being given by the Commerce Department to the possible export of domestic crude oil from California. He noted that any such plan would have substantial environmental impacts on affected ports, due to increased tanker traffic and hydrocarbon emissions from oil terminal facilities, but that existing procedures do not provide for an adequate assessment of these impacts.

Section-by-Section Analysis

Section 1. Clarification of national environmental policy

This section contains a number of amendments to NEPA to clarify the environmental policy set out in that act.

Section 101(b) of NEPA sets out six objectives of national environmental policy. Subsection 1(a) of this section adds as a seventh objective the provision of world leadership by the United States for the purpose of ensuring a healthy and stable global environment.

NEPA requires Federal agencies to consider alternatives to their proposed actions when preparing an EIS, but does not specify what sort of alternatives must be considered. Paragraph 1(b)(1) amends NEPA to make it clear that agencies shall consider reasonable alternatives to their actions that would achieve the same or similar public purposes, including alternatives that avoid the adverse environmental impacts of the proposed action and those that would otherwise mitigate those impacts. In so doing, the paragraph expands upon current CEQ regulations in two ways. First, it provides that a public purposes test shall govern the scope of alternatives to be analyzed under NEPA. Second, it requires that the scope of mitigation alternatives that agencies must consider under NEPA be broad enough to include those that would completely avoid adverse environmental impacts.

NEPA requires Federal agencies to consult with other Federal agencies prior to preparing an EIS. Paragraph 1(b)(2) would require them to consult with the public, as well.

NEPA requires Federal agencies to take a number of steps designed to further the environmental policy of the United States. Subsection 1(c) revises one of those requirements by strengthening the mandate for Federal action in support of efforts to enhance the quality of the global environment.

Regulations promulgated under NEPA (40 C.F.R. 1505.3) currently require that "mitigation * * * and other conditions established in (an) environmental impact statement or during its review and

committed as part of the decision (to take an action) shall be implemented by the lead agency or other appropriate consenting agency." Subsection 1(d) makes it clear that this requirement is binding and enforceable under NEPA by providing that "environmental mitigation and monitoring measures and other conditions discussed in a detailed statement or other document prepared under section 102(2)(C) (of NEPA) and selected by an agency as part of its final decision to undertake an action shall be implemented by the appropriate agency."

The Committee intends that this requirement be implemented in a manner that reflects common sense. An agency that identifies and selects environmental mitigation and monitoring measures as a basis for going forward with an action is obliged to ensure that these measures are implemented unless, in the interim, new information arises or new technology is developed that permits the agency to take other steps that are at least as effective in mitigating the adverse environmental effects of the action.

Section 2. The President's strategy for environmental progress

This section revises the scope and content of the annual environmental report to Congress prepared by CEQ and transmitted to Congress by the President pursuant to section 201 of NEPA. Current law requires a report that is essentially a catalogue of environmental trends and Federal programs as they affect virtually all categories of living and non-living natural resources. The most recent report submitted under this provision was more than 400 pages in length.

The report required under the amendment made by this section would set forth the President's strategy for achieving progress towards the national environmental goals spelled out in section 101 of NEPA, highlight areas of new or heightened environmental concern, and propose initiatives to strengthen and improve Federal programs. The report shall also analyze the effectiveness of measures specified in EISs to mitigate the adverse environmental impacts of Federal actions. A review of the effectiveness of these mitigation measures is required by section 4 of the bill.

Section 3. Regulatory authority

This section makes explicit the authority of CEQ to promulgate binding regulations governing the implementation of NEPA by all Federal agencies, including independent regulatory commissions such as the Federal Energy Regulatory Commission. The section also clarifies the authority of CEQ to provide for appropriate public review and comment on EISs and other documents, such as environmental assessments, that are prepared pursuant to NEPA.

Section 4. Review functions of council

This section provides for the systematic monitoring and appraisal of the EIS process.

Specifically, it requires CEQ to issue guidelines for Federal agencies to review a statistically significant sample of the EISs they have prepared in which measures were specified for the mitigation of adverse environmental impacts. Agencies are required to review the EISs to determine the accuracy of the predictions made therein

about the environmental impacts of Federal actions, to review the extent to which specified mitigation measures were implemented, and to assess the effectiveness of those mitigation measures. CEQ is required to analyze the agency reviews and include its findings in the annual report transmitted to Congress under section 201 of NEPA.

During Committee consideration of the bill, several agencies requested clarification of the term "statistically significant" and questioned the need for continuous, as opposed to a one-time, review of the effectiveness of mitigation measures.

Under the section, CEQ has the authority to determine the timing and frequency of the reviews to be conducted. The Committee intends that CEQ use this authority to ensure that the review process is as effective and efficient as possible. The ordering of reviews should be consistent with agency capabilities, and priority should be given to those agencies whose actions have the greatest effects on fish and wildlife resources and their habitat. Agencies whose actions rarely require environmental mitigation measures may be excluded from the review requirements.

The term "statistically significant" refers to a reasonably comprehensive sample of the types of mitigation measures undertaken pursuant to EISs prepared by the agency in question.

Section 5. Impact of agency actions on the environment outside U.S. jurisdiction

The purpose of this section is to require regulations that will ensure the adequate consideration of the effects of major Federal agency actions on the environment of areas outside U.S. jurisdiction.

Subsection (a)(1) requires CEQ to issue regulations within one year of the date of enactment to ensure the consideration, pursuant to section 102(2)(C) of NEPA, of the significant effects of major Federal actions on the environment of the global commons. The global commons are those areas, such as Antarctica, the high seas and the atmosphere that do not lie within the exclusive jurisdiction of any nation.

Subsection (a)(2) requires that the CEQ regulations ensure that Federal agencies assess the effects of their actions, including extraterritorial actions, on the environment outside the jurisdiction of the United States. This would include the consideration of transboundary pollution or other environmental impacts within the jurisdiction of a foreign country. These regulations, unlike those required by subsection (a)(1), shall further the objectives of NEPA, but are not subject to the requirements of section 102(2)(C) of that act.

Subsection (b) provides that the regulations required by this section shall be consistent with the national security and foreign policy of the United States and shall include guidance for assessing the effects of major Federal actions on certain specified matters of international environmental concern.

This section would have two major effects.

First, it ensures that Federal agencies will meet their obligation, under NEPA, to consider the significant effects of their major actions on the global commons.

Second, it ensures, more generally, that agencies will review the possible environmental effects of their proposed actions on areas outside U.S. jurisdiction. In this respect, the Committee intends that the regulations issued under section 5 shall supersede Executive Order 12114, take into account the bast available information about threats to the global environment, and reflect the importance of demonstrating U.S. leadership on international environmental issues.

The Committee intends that the regulations issued under this section should be generally applicable, unlike Executive Order 12114, to actions carried out jointly by the United States and a foreign government. Agencies should be instructed to coordinate the environmental review of their planned activities with the government of the affected nation and should seek the full participation and comment of that government in carrying out environmental assessment or review procedures. Each participating government should determine the appropriate level of public participation and comment by its own citizens.

For reasons of national security or foreign policy, CEQ may decide to maintain any of the exemptions to formal environmental review that are contained in Executive Order 12114, including those involving armed conflict, intelligence activities, and votes and other actions in international conferences and organizations. The committee takes note that certain law enforcement activities are so intertwined with national security or foreign policy (for example, suppression of international narcotics trafficking) that they may be embraced within the scope of (b)(1).

Taken together, the requirements of this section should ensure the formal assessment of all major Federal agency actions having a significant effect on the environment outside U.S. jurisdiction to the extent this is consistent with the national security and foreign policy of the United States.

The regulations issued under this section shall include guidance to assist Federal agencies in assessing the effects of their actions on loss of biological diversity. The Committee intends that the regulations on this point shall be applicable to all agency actions, whether the effects of those actions occur within or outside the jurisdiction of the United States.

The Committee intends that the guidelines on biological diversity shall be developed in consultation with governmental and non-governmental scientific authorities and that they include instructions for addressing the major factors that contribute to the loss of biological diversity, including (1) loss or degradation of habitat; (2) pollution; (3) the introduction of new or exotic species of plant or animal life; and (4) the direct or indirect destruction of plant and animal populations.

Section 6. Authorization of funds

This section authorizes $1 million annually in fiscal years 1989 and 1990 for the operation of the Office of Environmental Quality, which provides staff support for CEQ.

The Committee recognizes that current funding levels are not adequate to support an active and effective CEQ. By limiting this bill to the 1989 and 1990 fiscal years, the Subcommittee leaves

open the possibility that a substantial expansion of CEQ operations may occur in 1991 and succeeding years.

Section 7. Special provision

This section provides that any decision to authorize full operation of the Pilgrim nuclear power plant in Plymouth, Massachusetts shall be deemed to be a Federal action subject to review under section 102(2)(C) of NEPA, and no such full operation may occur until the environmental review documents required by this section have been completed. The requirements of this section are identical to those imposed by NEPA and by regulations promulgated pursuant to NEPA by the Nuclear Regulatory Commission.

Compliance With Clause 7, Rule XIII

In accordance with paragraph (d) of this clause, the provisions of this clause do not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office has been included in this report.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 1113 would not have a significant inflationary impact on the nation's economy.

Compliance With Clause 2(l)(3) of Rule XI

Pursuant to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives:

(A) The Subcommittee on Fisheries and Wildlife Conservation and the Environment held a legislative hearing on H.R. 1113 on March 7, 1989.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Committee on Merchant Marine and Fisheries has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at pursuant to clause 4(c)(2) of rule X of the Rules of the House of Representatives.

(D) The Director of the Congressional Budget Office has furnished the Committee with the following estimate and comparison of costs of H.R. 1113 pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 19, 1989.

Hon. Walter B. Jones,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for H.R. 1113, a bill to authorize appropriations for the Office of Environmental Quality for fiscal

years 1989 and 1990; to ensure consideration of the impact of major federal actions on the global environment, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 1113.

2. Bill title: A bill to authorize appropriations for the Office of Environmental Quality for fiscal years 1989 and 1990; to ensure consideration of the impact of major federal actions on the global environment, and for other purposes.

3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries, June 21, 1989.

4. Bill purpose: H.R. 1113 would require the Council on Environmental Quality (CEQ) to issue certain guidelines six months after enactment of the bill. The guidelines would direct federal agencies to review a sample of all environmental impact statements that include mitigation measures. Agencies' reviews would examine the accuracy of predictions and the effectiveness of the measures. Based on these reviews, the CEQ then would submit a summary report to the Congress annually. The bill also would require the Nuclear Regulatory Commission (NRC) to prepare environmental review documents relating to the Pilgrim nuclear power plant in Massachusetts.

In addition, H.R. 1113 would authorize the appropriation of $1 million to the Office of Environmental Quality for fiscal years 1989 and 1990. The 1989 budget authority is currently $0.9 million, and President Reagan's budget includes $0.9 million for 1990.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1990	1991	1992	1993	1994
CEQ:					
Authorization level	1.0				
Estimated outlays	0.9	0.1			
NRC:					
Estimated authorization level	0.5				
Estimated outlays	0.5				
Review of mitigation measures:					
Estimated authorization level	0.3	0.7	0.7	0.7	0.8
Estimated outlays	0.3	0.7	0.7	0.7	0.8
Total:					
Estimated authorization level	1.8	0.7	0.7	0.7	0.8
Estimated outlays	1.7	0.8	0.7	0.7	0.8

The costs of this bill fall within many budget functions.

Including outlays from prior years' appropriations to date, total outlays for CEQ in 1990 would be about $1.0 million.

Basis of estimate: Because agencies previously have not conducted the annual review of mitigation measures specified in the bill,

we have little information to estimate the costs of such reviews. Further, the cost of the reviews would depend primarily on the guidelines to be issued by the CEQ govering the timing, frequency, and extent of the reviews. As a result, the extent of the work to be required is uncertain at this time. This estimate assumes that an average of one person-year per agency would be devoted to these reviews each year for the 12 agencies that conduct the bulk of the environmental impact statements. On this basis, the cost of this requirement would be about $0.7 million annually. The costs in 1990 would be about half that amount, because the reviews could not begin until CEQ issues its guidelines six months after enactment of the bill.

Based on information from the NRC, we estimate that the environmental assessment required by the bill would cost $0.5 million in 1990. Other provisions in the bill are expected to have no significant costs.

The provisions requiring the CEQ to issue various guidelines do not affect this estimate, because total spending of the CEQ is assumed to be determined by the authorization level.

This estimate assumes that there will be no further appropriations for 1989 and that the amounts authorized for subsequent years will be appropriated. The estimate of outlays is based on historical spending patterns.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: James Hearn.

10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

Departmental Reports

The Committee solicited, and received, comments on H.R. 1113, or various proposed versions thereof, from EPA; the Departments of Interior, State, Justice, Transportation and Treasury; the National Aeronautics and Space Administration; the Drug Enforcement Administration; the Agency for International Development; the Nuclear Regulatory Commission; the Overseas Private Investment Corporation; the Panama Canal Commission and the International Boundary and Water Commission.

Reprinted below are the comments received from EPA and the Department of the Interior. The enclosures referenced in the report from EPA, as well as the other agency and departmental reports, are on file with the Committee.

U.S. Environmental Protection Agency,
Washington, DC, April 11, 1989.

Hon. Gerald Studds,
Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, DC.

Dear Chairman Studds: I appreciated the opportunity to testify on the usefulness and value of the National Environmental Policy

Act (NEPA) before your Subcommittee on March 7, and am pleased to provide the additional information we discussed at the hearing.

Enclosed is a copy of the June 16, 1988 testimony presented by R. Augustus Edwards III, Deputy Assistant Administrator for External Affairs, before the Senate Subcommittee on Hazardous Wastes and Toxic Substances, Committee on Environment and Public Works. This testimony provides the detailed EPA comments on last year's proposal by Senator Symms to apply NEPA to the actions of U.S. officials in the multilateral lending institutions. Also enclosed is my letter to the Senate Environment and Public Works Committee concerning that legislation.

Also enclosed is a copy of EPA's February 2, 1989 letter to the Council on Environmental Quality referring the action of the Bureau of Reclamation regarding renewal of long-term water contracts for the Orange Cove and other Friant Unit irrigation districts for the Central Valley Project.

Finally, I would like to respond to your request that I discuss in more detail the benefits and disadvantages of applying NEPA to extraterritorial actions of U.S. agencies. First EPA is convinced of the environmental, and frequently economic, benefits of carrying out environmental reviews for overseas U.S. Federal agency actions. Certainly, the goals and purpose of NEPA should be a basis for our activities in this area. Key elements of NEPA offer an excellent model for environmental reviews generally. These include assessing both direct and indirect effects, identifying alternatives, and coordination with other government programs and projects.

However, as I mentioned at the hearing, the Administration has not yet developed a position on appyling NRPA to overseas U.S. activities in the same manner as it is currently applied to domestic U.S. activities. EPA believes such an application of NEPA should be considered carefully, since the rationale for Executive Order 12114 applies to present.

First, applying the existing procedural requirements of NEPA internationally could limit the flexibility which agencies now have to use other kinds of environmental review documents (e.g., environmental impact assessments required by other countries or international organizations) in order to assess and document environmental impacts of proposed actions overseas. Agencies would have to comply with the current procedural requirements in the CEQ regulations regarding the format of environmental assessments and environmental impact statements, EIS filing and public comment, and other areas.

Another probably more important issue to consider is that application of existing NEPA requirements could raise sovereignty issues or create difficulties for U.S. foreign policy. Likewise, NEPA public disclosure requirements—so critical to the success of NEPA here in the U.S.—could conflict with procedures followed in other countries. These requirements could subject overseas U.S. actions to litigation in the U.S., while it is not clear whether litigation would be allowed in the country where the action is being taken.

My over-all concern is to increase improved environmental decision-making for U.S. projects, and U.S. funded projects, at home and abroad. I point out the above reservations because, in my opinion, they are deserving of discussion when contemplation of NEPA

application to international activities is underway. We need to take a closer look at what administrative and/or legislative changes are needed to address problems which have been identified regarding U.S. actions overseas.

I hope this will be useful to you. Please contact me if I can be of further assistance.

Sincerely,

JENNIFER JOY WILSON,
Assistant Administrator
for External Affairs.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, June 20, 1989.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is to provide you with the Department of the Interior's views on H.R. 1113, a bill "to authorize appropriations for the Office of Environmental Quality for fiscal years 1989, 1990, 1991, 1992, and 1993; to ensure consideration of the impact of major Federal actions on the global environment, and for other purposes," as marked up by the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

While we support the legislation's overall goal of, among other things, enhancing the accuracy of Federal mitigation efforts, specific provisions of the legislation give us concern and will not, in our opinion, enhance the intent of the legislation in an efficient and technically sound manner.

Section 1(b)(2) of the bill would require Federal agencies, prior to completing a National Environmental Policy Act (NEPA) document, to obtain comments of "the public," in addition to comments of Federal agencies with expertise or jurisdiction over environmental impacts. We believe this amendment is unnecessay as Federal agencies already are required to carry out extensive public review procedures for review of NEPA documents under various applicable Federal rules and statutes, such as the Council on Environmental Quality Regulations, and the Administrative Procedure Act. Any further requirements for public involvement would provide an unnecessary burden on Federal agency personnel and resources.

Section 4 of the bill would require the Council on Environmental Quality (CEQ), within six months after the date of enactment of the legislation, to issue guidelines under which each Federal agency would be required to review a "statistically significant sample" of environmental impact statements prepared by the agency under NEPA in which mitigation measures were specified. The agency would be required to review the sample to determine the accuracy of predictions and the effectiveness of mitigation measures.

Although the Department agrees with the general intent of this proposed amendment, we are concerned about the potential level of work and funding that would be required. Furthermore, it is our

understanding that oversight of environmental impact statements is the function of the CEQ, and is also performed by the Environmental Protection Agency (EPA) under its legislative mandates. To require every Federal agency to now undertake additional sampling and review functions could be extremely expensive, and require additional personnel at each agency. Additionally, a number of mechanisms already are in place to ensure that mitigation measures are carried out effectively. These include agency management oversight, the courts, the General Accounting Office, and CEQ regulations.

The wording of the section 4 is vague and subject to varying interpretations. For example, is the review to be a one-time effort, an annual effort, or a periodic effort? Also, there may be a need to clarify what is a "statistically significant sample" considering the number and wide variety of types of proposals.

Should the Subcommittee choose to pursue this amendment, the Department recommends that mitigation reporting be required every three years instead of annually. A summary of these results could then be included in the CEQ report to Congress.

Section 5 of the legislation would require the CEQ to issue regulations applying NEPA to Federal agency actions occurring outside the jurisdiction of the United States. We believe that the provisions of existing Executive Order 12114 adequately address the issue of environmental analyses of foreign activities.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

SUSAN RECCE LANSON,
Acting Assistant Secretary for Fish and Wildlife and Parks.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, charges in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

42 U.S.C. 4331

§ 4331. Congressional declaration of national environmental policy

* * * * * * *

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; [and]

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources[.]; *and*

(7) provide world leadership in ensuring a healthy and stable global environment.

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42 U.S.C. 4332

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the Environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

[(iii) alternatives to the proposed action,]

(iii) reasonable alternatives to the proposed action that achieve the same or similar public purposes, including alternatives that avoid the adverse impacts described in clause (ii) and alternatives that otherwise mitigate those adverse impacts,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved *and the public.* Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

* * * * * * *

[(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;]

(F) work vigorously to develop and implement policies, plans, and actions designed to support national and international efforts to enhance the quality of the global environment;

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42 U.S.C. 4336

SEC. 4336. Environmental mitigation and monitoring measures and other conditions discussed in a detailed statement or other document prepared under section 4332(2)(C) and selected by an agency as part of its final decision to undertake an action shall be implemented by the appropriate agency.

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42 U.S.C. 4341

§ 4341. Reports to Congress; recommendations for legislation

[The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the ade-

quacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.]

Not later than January 31 of each year, the President shall transmit to Congress a report which—

(1) describes the President's strategy for implementing the policy and objectives set forth in section 4331 during that year;

(2) describes areas of new or heightened environmental concern;

(3) proposes initiatives to strengthen and improve Federal environmental programs;

(4) sets priorities for national action to protect the environment; and

(5) analyzes issues associated with the implementation of this Act and the effectiveness of measures specified in detailed statements of Federal agencies under section 4332(2)(C) to mitigate the adverse environmental impacts of Federal actions.

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42 U.S.C. 4344

§ 4344. Duties and functions

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 4341 of this title;

* * * * * * *

(7) to report at least once each year to the President on the state and condition of the environment; [and]

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request[.]; and

(9) to promulgate regulations governing the implementation of this Act by all Federal agencies (including independent regulatory commissions) which include provisions for public review and comment on the detailed statements required by section 4332(2)(C) and, as appropriate, on other documents prepared pursuant to this Act.

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42 U.S.C. 4374

§ 4374. Authorization of appropriations

There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the fol-

lowing fiscal years which sums are in addition to those contained in Public Law 91-190:

(a) $2,126,000 for the fiscal year ending September 30, 1979.

(b) $3,000,000 for each of the fiscal years ending September 30, 1980, and September 30, 1981.

(c) $44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) $480,000 for each of the fiscal years ending September 30, 1985 and September 30, 1986.

(e) $1,000,000 for each of the fiscal years 1989 and 1990.

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